



OFFICE OF
DEREK ARMSTEAD
MAYOR

City of Linden

UNION COUNTY, NEW JERSEY

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October 15, 2019

Mr. Craig Carpenito
United States Attorney
District of New Jersey
U.S. Attorney's Office
970 Broad Street, 7th Floor
Newark, NJ 07102

Mr. Carpenito:

Please find attached both investigatory findings and pertinent documents, which were prepared by an independent auditing agency and point to a severe abuse of public trust.

As a result of the egregious nature of what has been discovered and the exorbitant dollar amount that was obtained by Mr. Scutari, who served as the Municipal Prosecutor for the City of Linden between May of 2003 and January 2019, I felt it was imperative to refer to this matter to your office for corroboration and further investigation.

Specifically, Nicolas Scutari, committed potentially unlawful acts by not appearing for logged work time for which he was both compensated and pension-credited with public money.

It is worth noting that page six of attached report summarizes the potential illegality, stating "the expense to the City of Linden for the days that Nicholas Scutari did not appear as a prosecutor including his salary, the contributions to the Public Employees' Retirement System, on his behalf, and the payroll taxes resulting from his salary were as follows: "The amount of these illicitly received disbursements total an astounding \$147,493.97."

Based on the attached documentation, I implore your office to immediately investigate the outlined claims and findings, as I have an obligation to the residents of the City of Linden to ensure that their interests are protected and that their tax dollars are spent in an appropriate manner.

Thank you for your attention to this request.

Regards,


Mayor Derek Armstead

DA/rkt

CC: Gurbir S. Grewal, Attorney General, State of New Jersey
Lyndsey Ruotolo, Acting Union County Prosecutor
Phil Murphy, Governor, State of New Jersey
Steven Sweeney, Senate President



October 7, 2019

Peter Brown, Chairperson
Linden Municipal Investigative Committee
301 N. Wood Avenue
Linden, New Jersey 07036

Dear Mr. Brown

**Re: Linden Municipal Investigative Committee
Former Prosecutor Nicolas Scutari**

At the request of the Municipal Council Investigatory Committee, I have calculated the amounts paid to Nicholas Scutari in excess of what was authorized from 2014 through 2018.

A. Documents Reviewed

In connection with my analysis, I reviewed the following documents:

1. Nicholas Scutari Time Off Activity 2014-2019.
2. Court Logs from 2014 through 2018.
3. July 3, 2019 Memorandum from Councilman Alfred Mohammed to Dan Antonelli, City Attorney.
4. Listing of Annual Salary of N. Scutari.
5. City of Linden Personnel Policy Manual Effective January 1, 2017.
6. Payroll tax information provided by the Personnel and Treasury Departments.

In addition, I relied upon the following facts:

- From January 1, 2014 through September 3, 2014, Nicholas Scutari received a salary of \$74,659.
- Beginning September 4, 2014 and continuing through December 31, 2018, Mr. Scutari received a salary of \$84,659.
- The municipal court operated 125 days in 2014, 124 days in 2015, 124 days in 2016, 115 days in 2017, and 111 days in 2018.
- Mr. Scutari was a member of the Public Employees' Retirement System.
- Mr. Scutari did not participate in the health insurance plan offered by the City of Linden.

B. Analysis and Calculations

Based on the information provided, Nicholas Scutari was hired as a municipal prosecutor for the City of Linden on May 6, 2003. According to the Personnel Policy Manual, Mr. Scutari was entitled to personal, vacation, and sick days. The use of these days must be preapproved, and a replacement prosecutor will be obtained to appear in place of Mr. Scutari.

1. Calculation of Days Not Approved

I reviewed the court logs to determine the number of days that Mr. Scutari did not appear and compared the logs with the listing of approved time off. This established the number of days that Mr. Scutari did not appear which were not previously approved. The number of days which were not previously approved are as follows:

	Beginning of Period	End of Period	Days Court In Session	Days Nicholas Scutari Did Not Appear	Days Approved	Days Not Approved	Percentage of Days Not Approved to Total Days In Session
2014	1/1/2014	6/30/2014	62	16	6	10	16%
	7/1/2014	12/31/2014	63	16	15	1	2%
	Total 2014		125	32	21	11	9%
2015	1/1/2015	6/30/2015	62	16	10	6	10%
	7/1/2015	9/3/2015	26	5	5	-	0%
	9/4/2015	12/31/2015	36	11	2	9	25%
	Total 2015		124	32	17	15	12%
2016	1/1/2016	6/30/2016	66	11	8	3	5%
	7/1/2016	12/31/2016	58	30	13	17	29%
	Total 2016		124	41	21	20	16%
2017	1/1/2017	6/30/2017	58	29	1	28	48%
	7/1/2017	12/31/2017	57	36	-	36	63%
	Total 2017		115	65	1	64	56%
2018	1/1/2018	6/30/2018	52	28	4	24	46%
	7/1/2018	12/31/2018	59	33	-	33	56%
	Total 2018		111	61	4	57	51%

2. Determination of Per Diem Salary

As previously described, beginning in 2014, Mr. Scutari earned a salary of \$74,659. Effective September 4, 2015, Mr. Scutari's salary increased to \$84,659. In order to calculate the per diem salary paid to Mr. Scutari, his annual salary was prorated based on the portion of the year it was received. The prorated salary was then divided by the number of court sessions during the period. This was calculated as follows:

Beginning of Period	End of Period	Portion of Year	Annual Salary	Prorated Salary	Days Court In Session	Per Diem Salary
1/1/2014	12/31/2014	100.00%	\$74,659	\$74,659	125	\$597.27
1/1/2015	9/3/2015	67.08%	\$74,659	\$50,079	88	\$569.08
9/4/2015	12/31/2015	32.92%	\$84,659	\$27,872	36	\$774.22
1/1/2016	12/31/2016	100.00%	\$84,659	\$84,659	124	\$682.73
1/1/2017	12/31/2017	100.00%	\$84,659	\$84,659	115	\$736.17
1/1/2018	12/31/2018	100.00%	\$84,659	\$84,659	111	\$762.69

3. Calculation of Payments to Nicholas Scutari for Days Off That Were Not Approved

The amount of salary paid to Nicholas Scutari for days he did not appear in court and which were not approved have been determined from the calculations previously described in this report. Adjustments were made to the resulting figures for the City of Linden's contribution made on behalf of Mr. Scutari into the Public Employees' Retirement System and the employer share of payroll taxes.

a. Salary Paid for Days Not Approved

	Beginning of Period	End of Period	Days Not Approved	Per Diem Salary	Salary Paid for Days Not Approved
2014	1/1/2014	6/30/2014	10	\$597.27	\$5,972.72
	7/1/2014	12/31/2014	1	\$597.27	\$597.27
	Total 2014		11		\$6,569.99
2015	1/1/2015	6/30/2015	6	\$569.08	\$3,414.50
	7/1/2015	9/3/2015	-	\$569.08	\$0.00
	9/4/2015	12/31/2015	9	\$774.22	\$6,968.00
	Total 2015		15		\$10,382.49
2016	1/1/2016	6/30/2016	3	\$682.73	\$2,048.20
	7/1/2016	12/31/2016	17	\$682.73	\$11,606.48
	Total 2016		20		\$13,654.68
2017	1/1/2017	6/30/2017	28	\$736.17	\$20,612.63
	7/1/2017	12/31/2017	36	\$736.17	\$26,501.95
	Total 2017		64		\$47,114.57
2018	1/1/2018	6/30/2018	24	\$762.69	\$18,304.65
	7/1/2018	12/31/2018	33	\$762.69	\$25,168.89
	Total 2018		57		\$43,473.54

b. Contributions Made by the City of Linden Into the Public Employees Retirement System

The City of Linden made contributions into the Public Employee's Retirement System based on the salary paid to Mr. Scutari. The contribution rates were 12.46% for the fiscal year ending June 30, 2014, 12.91% for the fiscal year ending June 30, 2015, 13.37% for the fiscal year ending June 30, 2016, 14.11% for the fiscal year ending June 30, 2017, and 13.69% for the fiscal year ending June 30, 2018. The contribution is determined by the State of New Jersey and is due twenty-one months after the close of the fiscal year. For example, the contribution due for the fiscal year ending June 30, 2017 is due April 1, 2020. The percentage due for the fiscal year ending June 30, 2019 has not yet been determined. For purposes of this analysis, it has been assumed that the contribution percentage for July 1, 2018 through December 31, 2018 will be 13.69%.

The pension contribution is calculated as follows:

	Beginning	End	Salary Paid	Pension	
	of Period	of Period	for Days	Contribution	Pension
			Not Approved	Percentage	Contribution
2014	1/1/2014	6/30/2014	\$5,972.72	12.46%	\$744.20
	7/1/2014	12/31/2014	\$597.27	12.91%	\$77.11
	Total 2014		\$6,569.99		\$821.31
2015	1/1/2015	6/30/2015	\$3,414.50	12.91%	\$440.81
	7/1/2015	9/3/2015	\$0.00	13.37%	\$0.00
	9/4/2015	12/31/2015	\$6,968.00	13.37%	\$931.62
	Total 2015		\$10,382.49		\$1,372.43
2016	1/1/2016	6/30/2016	\$2,048.20	13.37%	\$273.84
	7/1/2016	12/31/2016	\$11,606.48	14.11%	\$1,637.67
	Total 2016		\$13,654.68		\$1,911.52
2017	1/1/2017	6/30/2017	\$20,612.63	14.11%	\$2,908.44
	7/1/2017	12/31/2017	\$26,501.95	13.69%	\$3,628.12
	Total 2017		\$47,114.57		\$6,536.56
2018	1/1/2018	6/30/2018	\$18,304.65	13.69%	\$2,505.91
	7/1/2018	12/31/2018	\$25,168.89	13.69%	\$3,445.62
	Total 2018		\$43,473.54		\$5,951.53

c. Payroll Tax Payments Made by the City of Linden on Behalf of Nicholas Scutari

The employer's share of the payroll taxes made by the City of Linden include FICA taxes (Social Security tax and Medicare tax) to the Federal government and unemployment insurance, workforce development, healthcare subsidy fund, and disability insurance payments to the State of New Jersey.

	Beginning of Period	End of Period	Social Security Tax	Medicare Tax	New Jersey Employment Taxes	Total	Percentage of Days Not Approved to Total Days In Session	Payroll Taxes for Days Not Approved
2014	1/1/2014	6/30/2014	\$2,268.49	\$530.54	\$285.08	\$3,084.11	16.13%	\$497.44
	7/1/2014	12/31/2014	\$2,360.37	\$552.02	\$0.00	\$2,912.39	1.59%	\$46.23
	Total 2014		\$4,628.86	\$1,082.56	\$285.08	\$5,996.50		\$543.66
2015	1/1/2015	6/30/2015	\$2,572.34	\$601.60	\$244.80	\$3,418.73	9.68%	\$330.85
	7/1/2015	9/3/2015	\$905.35	\$211.74	\$0.00	\$1,117.08	0.00%	\$0.00
	9/4/2015	12/31/2015	\$1,771.18	\$414.23	\$0.00	\$2,185.40	25.00%	\$546.35
	Total 2015		\$5,248.86	\$1,227.56	\$244.80	\$6,721.22		\$877.20
2016	1/1/2016	6/30/2016	\$2,586.71	\$604.96	\$229.83	\$3,421.50	4.55%	\$155.52
	7/1/2016	12/31/2016	\$2,662.16	\$622.60	\$0.00	\$3,284.76	29.31%	\$962.77
	Total 2016		\$5,248.87	\$1,227.56	\$229.83	\$6,706.26		\$1,118.30
2017	1/1/2017	6/30/2017	\$2,572.34	\$601.60	\$256.28	\$3,430.22	48.28%	\$1,655.97
	7/1/2017	12/31/2017	\$2,676.53	\$625.96	\$0.00	\$3,302.49	63.16%	\$2,085.78
	Total 2017		\$5,248.87	\$1,227.56	\$256.28	\$6,732.71		\$3,741.75
2018	1/1/2018	6/30/2018	\$2,574.46	\$602.09	\$237.58	\$3,414.14	46.15%	\$1,575.75
	7/1/2018	12/31/2018	\$2,678.74	\$626.48	\$0.00	\$3,305.21	55.93%	\$1,848.68
	Total 2018		\$5,253.20	\$1,228.57	\$237.58	\$6,719.35		\$3,424.43

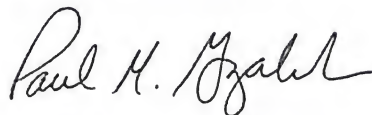
C. Conclusions

As described in this report, the expense to the City of Linden for the days that Nicholas Scutari did not appear as a prosecutor including his salary, the contributions to the Public Employees' Retirement System on his behalf, and the payroll taxes resulting from his salary were as follows:

	Beginning of Period	End of Period	Salary Paid for Days Not Approved	Pension Contributions	Payroll Taxes	Total
2014	1/1/2014	6/30/2014	\$5,972.72	\$744.20	\$497.44	\$7,214.36
	7/1/2014	12/31/2014	\$597.27	\$77.11	\$46.23	\$720.61
	Total 2014		\$6,569.99	\$821.31	\$543.66	\$7,934.97
2015	1/1/2015	6/30/2015	\$3,414.50	\$440.81	\$330.85	\$4,186.15
	7/1/2015	9/3/2015	\$0.00	\$0.00	\$0.00	\$0.00
	9/4/2015	12/31/2015	\$6,968.00	\$931.62	\$546.35	\$8,445.97
	Total 2015		\$10,382.49	\$1,372.43	\$877.20	\$12,632.12
2016	1/1/2016	6/30/2016	\$2,048.20	\$273.84	\$155.52	\$2,477.57
	7/1/2016	12/31/2016	\$11,606.48	\$1,637.67	\$962.77	\$14,206.92
	Total 2016		\$13,654.68	\$1,911.52	\$1,118.30	\$16,684.49
2017	1/1/2017	6/30/2017	\$20,612.63	\$2,908.44	\$1,655.97	\$25,177.04
	7/1/2017	12/31/2017	\$26,501.95	\$3,628.12	\$2,085.78	\$32,215.85
	Total 2017		\$47,114.57	\$6,536.56	\$3,741.75	\$57,392.88
2018	1/1/2018	6/30/2018	\$18,304.65	\$2,505.91	\$1,575.75	\$22,386.31
	7/1/2018	12/31/2018	\$25,168.89	\$3,445.62	\$1,848.68	\$30,463.19
	Total 2018		\$43,473.54	\$5,951.53	\$3,424.43	\$52,849.50
	Total 2014 Through 2018		\$121,195.28	\$16,593.35	\$9,705.34	\$147,493.97

If you have any questions, or require any additional information, please do not hesitate to contact me.

Regards,
Gazaleh Consulting LLC



Paul M. Gazaleh, CPA/ABV

Brown 191007/City of Linden

October 8, 2019

From: Municipal Council Investigative Committee (MIC)

To: Linden City Council

Cc: Derek Armstead, Mayor

Municipal Council Investigative Committee Findings Report
CONFIDENTIAL

Re: Nicholas Scutari Former Linden Prosecutor
2014-2018 years in review

On or about February 19, 2019 the City Council of the City of Linden voted and resolved to establish a Confidential Municipal Council Investigative Committee pursuant to N.J.S.A. 40:48-25 to investigate and determine if former Prosecutor Nicholas Scutari abused his authorized sick, vacation and or personal time, or in any other way violated established principles and standards of municipal government, rules, regulations or statutes associated and or promulgated thereto. In furtherance of this question, the Linden City Council voted to hire a Forensic Auditor, Gazaleh Consulting, LLC, Paul M. Gazaleh, CPA/ABV the Auditor and Managing Member.

The Members appointed to the Committee were Councilman Peter Brown, Councilman Ralph Strano, Councilman Alfred Muhammed and appearing as Ex-Officio of all committees, Council President, Michele Yamakaitis. Councilman Brown was appointed as the Chair of the Committee.

The Committee met in person on June 24, 2019; July 8, 2019; July 17, 2019; July 23, 2019; August 13, 2019; August 22, 2019 and telephonically on October 8, 2019.

The Committee reviewed documents and took testimony as follows:

Request for Qualifications (RFQs) Resolutions of Professionals and Attorneys;

2013-48;58;91;429

2014-35;40;48;293;294;402;403;427

2015-18;21;49;137;420

2016-14;19;39;408

2017-379;5;6;27;405;400

2018-5;23;88;129

Nicholas Scutari Time Off Activity Sheets 2014-2019;

2014-2018 Court Prosecutor's Appearance Logs, with dates, session times and name of appearing Prosecutor;

Cross Referenced Documents from Court Prosecutor's Appearance Logs with actual Court Records for verification using sampling of dates on the Court Logs;

Reviewed Court Plea Forms and New Jersey Automated Complaint System of defendants appearing at Court session with Acting Prosecutor using sampling from Court Prosecutor's Appearance Logs;

Audio reviewed Municipal Court taped proceedings using the samples provided by the Court cross referenced against the Court Prosecutor's Appearance Logs and Court Plea Forms;

Verification of non-vendor and non-payments made to certain Acting Prosecutors by the City of Linden;

Testimony was taken of two (2) Court personnel and (1) person of the Department of Personnel

The Committee determined that the Documents and Testimonies revealed that three Acting Prosecutors' listed on the Court Prosecutor's Appearance Logs were not on the RFQ list as qualified for the years reviewed or part of a law firm that was on the RFQ list as qualified for the years reviewed. The Committee determined that the Documents and Testimonies revealed that the City made no payments to three (3) Acting Prosecutors who appeared on the Court Prosecutor's Logs on dates when Mr. Scutari was scheduled and the Acting Prosecutors were not listed in the City's system as Vendors. The Committee further determined that certain dates when Mr. Scutari had Acting Prosecutors' cover his sessions that he did not have his time deducted from his vacation, sick or personal time according to the Time Off Activity Sheet.

Based on the foregoing information and determinations, on August 22, 2019, The Committee voted that there was probable cause that Mr. Scutari took unauthorized time off from work for which he was paid; had three (3) Prosecutors who were not qualified through the RFQ process or otherwise as Vendors for the City of Linden serve as Acting Prosecutors and appear in Municipal Court in his place, of whom one of those Acting Prosecutors' appeared on more than eighty-five (85) occasions; and that there was probable cause that violations of ethics or other standards to which Municipal Employees are required to adhere were violated. Finally, The Committee voted to forward documents and a request for a forensic review to Gazaleh Consulting, LLC for an analysis and audit of the cost, if any, to the City for the days not reflected on the Time Off Activity Sheet where Mr. Scutari did not appear at his scheduled Court Sessions.

On October 7, 2019, Gazaleh Consulting issued a report attached hereto as Exhibit "A" reflecting an "expense to the City of Linden..." in the amount of \$147,493.07. The Committee met telephonically on October 8, 2019, all members were present including the Ex-Officio to all Committees, Council President Michele Yamakaitis. A Motion was made by Councilman Brown and a Second was made by Councilman Strano and the Committee voted as follows:

1. Were there statutory, regulatory, rules or other governmental standards violated by the Employee under investigation? **Yes-Unanimous Vote**
2. Does the Committee accept the Report of Gazaleh Consulting? **Yes- Unanimous Vote**
3. Does the Committee adopt the analysis and amounts cited by Gazaleh Consulting?
Yes-Unanimous Vote
4. Does the Committee recommend this matter be referred for further action to be taken by an authority beyond the City Council's Jurisdiction? **Yes-Unanimous Vote**
5. Does the Committee recommend that the Linden City Council accept the Committee's findings and act on the recommendation set forth in Motion Number 4? **Yes-Unanimous Vote**

The Committee refers this matter to be resolved before the full body of the Linden City Council
on October 15, 2019.

Nothing follows _____